

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

CACR05-1341

JUNE 14, 2006

LEE VAUGHN CLARK
APPELLANT

AN APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT [NO. CR-2005-40]

V.

HONORABLE HAROLD S. ERWIN,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

In this appeal from the Jackson County Circuit Court, appellant, Lee Vaughn Clark, argues for reversal that the evidence was insufficient to support the jury's verdict of sixty months' imprisonment for terroristic threatening and kidnaping. Because appellant failed to comply with Rule 33.1 of the Arkansas Rules of Criminal Procedure, his sufficiency argument is not preserved for review, and we affirm.

Appellant was charged by felony information with the rape, terroristic threatening, and kidnaping of Jacquelyn Donaldson. Donaldson testified that she and appellant were involved in a relationship but that appellant was very jealous. On several occasions, appellant and Donaldson would attend events together, and appellant would become upset when other men would talk to or hug Donaldson. According to Donaldson, appellant made comments like,

“you know I have my piece with me and I should have just taken him out.”

The charges in this case arose from two separate incidents. Donaldson testified that, on February 8, 2005, she called her son to pick her up from work. When she left the building with co-workers, appellant was parked at the back door. To prevent a scene, Donaldson got in the vehicle, along with a co-worker, who Donaldson usually gave a ride home. After they dropped the co-worker off, Donaldson testified that appellant refused her request to take her directly home. Instead, Donaldson stated that appellant told her that, if he took her home, she would not listen to him. Thereafter, appellant took Donaldson to his home, demanded that she take off all of her clothes, had sex with her, and took her home. Donaldson testified that, when she arrived home, she went straight to the bathroom and took a bath.

The following day, Donaldson testified that appellant called her at work. She stated that she demanded that appellant not call her any more. Later that day, while at Fred’s Dollar Store, appellant called Donaldson again. He informed her that he had something to give her. Donaldson told appellant that, whatever it was, she did not want it and to stop calling her. After she hung up the phone, Donaldson paid for her items and left the store. While putting the items in the car, she turned around to close the door and appellant was there, squatting beside the door. Donaldson pleaded with appellant to leave her alone, but appellant told her that they needed to talk. Donaldson noticed an acquaintance coming out of the store. When appellant noticed her looking at the man, Donaldson stated that appellant pulled out his gun and told her, “Make a scene. They’ll read about us in the newspaper tomorrow. I’ll take you

out and me too, right here.” At that point, appellant ordered Donaldson into the vehicle. Appellant got in the back seat behind Donaldson and told her to drive off.

As they were driving, Donaldson called 911. Donaldson did not speak to the operator, but she left the phone on so that the operator could hear her. Donaldson told appellant that he was scaring her with the gun and that “maybe we can work this out.” She noted that, at some point, she hung up the phone, but the 911 operator called back. Donaldson testified that she answered and it was a lady from the Newport Police Department asking her if she was alright. Donaldson was afraid to talk so she told the operator that, “I’m okay and I’ll get Tracus [her son] to give you a call.” She then hung up the phone. The phone rang again, but she did not answer it. Subsequently, appellant asked Donaldson to take him back to his car at Fred’s Dollar Store. She obliged and thereafter did not go home but went to stay with her mother for a few days. Donaldson finally went to the police and told them what had happened. Consequently, appellant was arrested and charged with rape, terroristic threatening, and kidnaping. The jury found him guilty of terroristic threatening and kidnaping and sentenced him to sixty months in the Arkansas Department of Correction. This appeal followed.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Mason v. State*, ___ Ark. ___, ___ S.W.3d __ (Apr. 14, 2005). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing the

sufficiency of the evidence, the appellate court determines whether there is substantial evidence to support the verdict, viewing the evidence in a light most favorable to the State. *McGehee v. State*, 338 Ark. 152, 992 S.W.2d 110 (1999).

A criminal defendant challenges the sufficiency of the evidence by raising a motion to dismiss or a motion requesting a directed verdict. *Maxwell v. State*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 4, 2004). Rule 33.1 of the Arkansas Rules of Criminal Procedure explains the procedure a criminal defendant must follow when making a proper motion for dismissal or directed verdict. The Rule in relevant part provides that “[a] motion for directed verdict shall state the specific grounds therefor.” Ark. R. Crim. P. 33.1(a) (2005); *see also Pinell v. State*, ___ Ark. ___, ___ S.W.3d ___ (Dec. 8, 2005); *Durham v. State*, 320 Ark. 689, 899 S.W.2d 470 (1995); *Thomas v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Oct. 5, 2005).

Here, counsel for appellant made the following directed-verdict motion after the State rested its case, which the circuit court denied:

DEFENSE COUNSEL:	I want a directed verdict for lack of sufficient evidence on the remaining counts, kidnaping and terroristic threatening. Based upon the facts don’t support enough to prove the State’s prima facie case to go to the jury.
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He then made the following renewal of his motion at the close of his defense, which the court again denied:

DEFENSE COUNSEL:	The defense rests, and renews its motions, Your Honor, for the same reasons stated at the close of the State’s case.
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Counsel’s initial motion at the close of the State’s case was a general challenge to the sufficiency of the evidence. It failed to point to any specific flaw in the State’s evidence and

it did not specify any elements of the criminal acts which had not been proven. Rule 33.1 is to be strictly construed. *See Pratt v. State*, ___ Ark. ___, ___ S.W.3d ___ (Sept. 30, 2004). Because appellant's directed-verdict motion was non-specific, its denial is not preserved for this court's review. Accordingly, we affirm the judgment of conviction.

Affirmed.

GLOVER and ROAF, JJ., agree.